

RAYMOND ROBINSON,  
Plaintiff,


DAVID RUBIN, et al,  
Defendants.

Case No.: '08 CV 0244 DMS (BLM)

## NOTICE OF APPEAL

Notice is hereby given that Raymond Robinson, Plaintiff in the above-named case, hereby appeals to the United States Court of Appeals for the Ninth Circuit from an order dismissing the complaint with prejudice as to Defendant David Rubin entered in this action on the 23rd day of July, 2008.

Dated: 8-15-08

  
Raymond Robinson, Plaintiff in pro per

# UNITED STATES DISTRICT COURT

Southern District of California

Raymond Robinson

Plaintiff,

v.

Case No.: 3:08-cv-00244-DMS-BLM

Judge Dana M. Sabraw

David Rubin, et al.

Defendant.

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## JUDGMENT IN A CIVIL CASE

         **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

    X     **Decision by Court.** This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED The Court Grants Defendant's motion to dismiss Plaintiff's First Amended Complaint for failure to state a claim. Plaintiff's First Amended Complaint is hereby dismissed without leave to amend.

W. Samuel Hamrick, Jr.,  
Clerk of the Court

Date: 7/23/08

By: s/ L. Odierno, Deputy Clerk

ENTERED ON: July 23, 2008

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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 RAYMOND ROBINSON,

12 Plaintiff,

13 vs.

14 DAVID RUBIN AND BRIAN CORNELL,

15 Defendants.  
16  
17

CASE NO. 08cv0244 DMS (BLM)

**ORDER GRANTING DEFENDANT  
DAVID RUBIN'S MOTION TO  
DISMISS PLAINTIFF'S FIRST  
AMENDED COMPLAINT**

**[Docket No. 22]**

18 This matter comes before the Court on Defendant David Rubin's motion to dismiss Plaintiff's  
19 First Amended Complaint. Plaintiff has filed an opposition to the motion, and Defendant Rubin has  
20 filed a reply. On July 2, 2008, the Court found the motion suitable for decision without oral argument  
21 pursuant to Civil Local Rule 7.1(d)(1). For the reasons discussed below, the Court grants the motion  
22 to dismiss.

23 **I.**

24 **BACKGROUND**

25 This case arises out of a court trial following the issuance of a traffic citation by Officer Brian  
26 Cornell to Plaintiff on November 15, 2006. On February 9, 2007, Defendant Rubin, a San Diego  
27 Superior Court judge, presided over the trial on the traffic citation. Plaintiff and Officer Cornell  
28 appeared and testified at the trial, at the conclusion of which Defendant Judge Rubin found Plaintiff

1 guilty of an infraction violation of California Vehicle Code section 21804, subdivision (a).<sup>1</sup> Plaintiff  
2 appealed his conviction, and on January 18, 2004, the state appellate panel reversed the judgment of  
3 the trial court and dismissed the case in the interests of justice.

4 Plaintiff filed the present case against Defendant Rubin and Defendant Cornell on February  
5 7, 2008. Defendants each filed motions to dismiss the Complaint, which were denied as moot upon  
6 the filing of Plaintiff's First Amended Complaint. In the First Amended Complaint, Plaintiff alleges  
7 the Defendants conspired to deprive him of his due process rights as protected under and guaranteed  
8 by Section 1 of the Fourteenth Amendment. Plaintiff also alleges the Defendants violated California  
9 Civil Code sections 1708, 1709, 1710 and California Penal Code sections 182(a)(1) and 182(a)(5).  
10 Defendant Cornell filed a motion to dismiss the First Amended Complaint on May 8, 2008, and this  
11 Court granted Defendant Cornell's motion on June 9, 2008.

## 12 II.

### 13 DISCUSSION

14 Defendant Rubin moves to dismiss the First Amended Complaint pursuant to Federal Rules  
15 of Civil Procedure 12(b)(1), 12(b)(2), and 12(b)(6). Defendant Rubin argues that the Complaint fails  
16 to state a claim for which relief can be granted and that he is immune from suit based on the doctrine  
17 of judicial immunity. Defendant Rubin also argues that this Court lacks jurisdiction based upon state  
18 sovereign immunity and the *Rooker-Feldman* abstention doctrine. Plaintiff disputes each of these  
19 arguments.

20 Dismissal pursuant to Rule 12(b)(6) is proper only where there is no cognizable legal theory  
21 or an absence of sufficient facts alleged to support a cognizable legal theory. *Navarro v. Block*, 250  
22 F.3d 729, 732 (9th Cir. 2001) (citing *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir.  
23 1988)). In deciding a 12(b)(6) motion, all material factual allegations of the complaint are accepted  
24 as true, as well as all reasonable inferences to be drawn from them. *Cahill v. Liberty Mut. Ins. Co.*, 80  
25 F.3d 336, 338 (9th Cir. 1996). However, the court need not accept all conclusory allegations as true;

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26  
27 <sup>1</sup> California Vehicle Code section 21804 [Entry onto highway], subdivision (a), provides: "The driver  
28 of any vehicle about to enter or cross a highway from any public or private property, or from an alley, shall  
yield the right-of-way to all traffic, as defined in section 620, approaching on the highway close enough to  
constitute an immediate hazard, and shall continue to yield the right-of-way to that traffic until he or she can  
proceed with reasonable safety."

1 rather, it must “examine whether conclusory allegations follow from the description of facts as alleged  
2 by the plaintiff.” *Holden v. Hagopian*, 978 F.2d 1115, 1121 (9th Cir. 1992) (citation omitted). A claim  
3 “should not be dismissed unless it appears beyond doubt that plaintiff can prove no set of facts in  
4 support of his claim which would entitle him to relief.” *Perfect 10, Inc. v. Visa Intern. Service Ass’n*,  
5 494 F.3d 788, 794 (9th Cir. 2007) (quoting *Rodriguez v. Panayiotou*, 314 F.3d 979, 983 (9th Cir.  
6 2002)), *cert. denied*, 128 S. Ct. 2871 (2008).

7 The doctrine of judicial immunity bars civil suits for money damages under Section 1983  
8 against judicial officers for alleged constitutional violations. *Stump v. Sparkman*, 435 U.S. 349, 354  
9 (1978). Judges have absolute immunity from suit for judicial acts taken within the jurisdiction of their  
10 courts. *Schucker v. Rockwood*, 846 F.2d 1202, 1204 (9th Cir. 1984). An act is “judicial” if it is the type  
11 of act which is normally performed by a judge and if it is performed by the judge in his or her judicial  
12 capacity. *Stump*, 435 U.S. at 362. A judicial act does not become less “judicial” because of an  
13 allegation of malice or ill-motive. *Mireles v. Waco*, 502 U.S. 9, 12 (1991). Judicial immunity  
14 encompasses injurious legal error, *Cleavinger v. Saxner*, 474 U.S. 193, 199-200 (1985), bad faith and  
15 malice, *Mireles*, 502 U.S. at 11, and the commission of grave procedural errors. *In re Castillo*, 297  
16 F.3d 940, 947 (9th Cir. 2002) (citing *Stump*, 435 U.S. at 359).

17 Absolute judicial immunity shields Defendant Rubin from Plaintiff’s claims. Traffic infraction  
18 proceedings are properly within a California court’s subject matter jurisdiction. *See People v. Williams*,  
19 145 Cal. App. 4th 756, 760 (2006). Additionally, this Court agrees with Defendant that Judge Rubin  
20 was acting in his official capacity during the traffic infraction proceedings when he sought to  
21 understand the facts of the case through the testimony of Plaintiff and Officer Cornell. Acting as trier  
22 of fact during a traffic infraction proceeding is a typical judicial function. Such conduct cannot be the  
23 basis of any civil claim because it is precluded by the doctrine of absolute judicial immunity. Since the  
24 First Amended Complaint is barred by judicial immunity and thus does not contain any factual

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1 allegations consistent with a right to relief, the Court grants the Defendant's motion to dismiss the First  
2 Amended Complaint.<sup>2</sup>

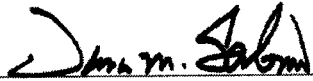
3 **III.**

4 **CONCLUSION AND ORDER**

5 In light of the above, the Court GRANTS Defendant's motion to dismiss Plaintiff's First  
6 Amended Complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).  
7 Plaintiff's First Amended Complaint is hereby dismissed without leave to amend. The Clerk of Court  
8 shall close this case.

9 **IT IS SO ORDERED.**

10 DATED: July 23, 2008

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13 HON. DANA M. SABRAW  
14 United States District Judge  
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28 <sup>2</sup> Because the Court dismisses Plaintiff's claims pursuant to judicial immunity, the Court declines to address Defendant's arguments for dismissal relating to sovereign immunity and the abstention doctrine.

## Notice of Appeal Notification Form

**To:** Clerk, U.S. Court of Appeals  
**From:** U.S. District Court, Southern District of California  
**Subject:** New Appeals Case Information & Docket Fee Notification

**Date:** 8/18/2008

### Case Information

Case Title: Raymond Robinson v. David Rubin  
 U.S.D.C. No.: 08cv244-DMS-BLM U.S.D.C. Judge: Dana M. Sabraw  
 Complaint/Indictment/Petition Filed: Complaint  
 Appealed Order Entered: 7/23/2008  
 Notice of Appeal Filed: 8/15/2008  
 Court Reporter: n/a

COA Status: ☐ Granted in full/part (appeal only) ☐ Denied (send clerk's file)

### Docket Fee Notification

Docket Fee: ☒ Paid ☐ Not Paid ☐ No Fee Required  
 USA/GOVT. APPEAL: ☐ Yes ☒ No

Date F/P granted (Show Date and Attach Copy of Order): \_\_\_\_\_

Was F/P Status Revoked? ☐ Yes ☐ No

Companion Case(s): (Please list consolidated cases, if applicable) USCA Case No. 08-56099

### Counsel Information

#### Appellant Counsel:

Raymond Robinson  
 4562 Illinois Street  
 San Diego, CA 92116  
 (619) 283-3121

#### Appellee Counsel:

Cheryl Lynn Brierton  
 Superior Court of California, County of San Diego  
 220 West Broadway  
 San Diego, CA 92101  
 (619) 450-5356

Counsel Status: ☐ Retained ☐ Appointed ☒ Pro Se

Appointed by: \_\_\_\_\_  
 (Attach copy of order/minutes)

### Defendant Information

Prisoner ID Number: n/a  
 Bail: \_\_\_\_\_  
 Custody: \_\_\_\_\_

**SERVICE LIST**

**Counsel for Appellant(s) and Appellee(s), as listed on the previous page, have been sent copies of the following items:**

x	Transmittal of U.S.C.A. (Appellant and Appellee)
x	Case Information/Docketing Fee Notification Form. (Appellant Only)
x	Notice of Appeal. (Appellant, Appellee, U.S. District Judge, USPO, and Court Reporter)
x	Docket Entries (Appellant and Appellee)
x	Designation of Reporter's Transcript and Ordering Form. (Appellant Only, mailed separately)
	Order for Time Schedule. (Criminal Only) (Appellant, Appellee, and Court Reporter)
	Magistrate Judge's Report and Recommendation
	COA Order
	F/P Order
	Minute Order
x	Other: Judgment, entered 7/23/2008; Order Granting Defendant David Rubin's Motion to Dismiss Plaintiff's First Amended Complaint, entered 7/23/2008

Form Completed And Documents Served By U.S. District Court Deputy Clerk:

Angela Rowland

Deputy's Name

*A Rowland*

Deputy's Signature



**UNITED STATES DISTRICT COURT**

Southern District Of California  
 Office Of The Clerk  
 880 Front Street, Room 4290  
 San Diego, California 92101-8900  
 Phone: (619) 557-5600  
 Fax: (619) 702-9900

W. Samuel Hamrick, Jr.  
 Clerk of Court

To: Clerk, U.S. Court of Appeals  
 P.O. Box 193939  
 San Francisco, CA 94119-3939

Re: **USCA No:**  
**USDC No: 08cv244-DMS-BLM**  
**Robinson v. Rubin**

Clerk, U.S. Court of Appeals, enclosed herewith you will please find:

x	Copy of the Notice of Appeal	x	Docket Entries
x	Case Information/Docket Fee Payment Notification Form		
	Order for Time Schedule (Criminal)		
	Original Clerk's Record in	set(s) of	volume(s).
	Reporter's transcript's transcripts in	set(s) of	volume(s).
	Exhibits in	envelope(s)	box(es) folders(s)
x	Judgement Order		F/P Order
	CJA Form 20		Minute Order
	Certificate of Record		Mandate Return
	Magistrate Judge's Report and Recommendation		
	COA Order		
	Amended docket fee notification form		
	Order Appointing Counsel for Appeal		
x	Order Granting Defendant David Rubin's Motion to Dismiss Plaintiff's First Amended Complaint, entered 7/23/2008		
x	Please acknowledge on the enclosed copy of this transmittal		

Sincerely yours,

W. Samuel Hamrick, Jr.  
 Clerk of Court

By: A Rowland  
 Angela Rowland, Deputy

Date: 8/18/2008